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A POSSIBLE MODERNIZATION OF THE SWEDISH INSURANCE BUSINESS ACT

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In 1999, the Swedish banking legislation was successfully modernized. The reform made the general Companies Act – by virtue of reference to the Companies Act in the Banking and Finance Act - applicable to banks limited by shares. Prior to this reform, Swedish banks were special purpose vehicles, established and regulated solely by the banking legislation. However, the 1999 reform did not extend to Swedish insurance companies which remain special purpose vehicles, established and regulated solely by outdated insurance business legislation. Finally, there is hope that this will soon change, at least as regards insurance companies limited by shares.

Background

A new Insurance Business Act is in the making. On November 19, 2009, the Ministry of Finance presented a Memo (hereafter the "Memo") including a draft new Insurance Business Act (hereafter the "New Act").[1] The proposed New Act is to a large extent based on a 2006 proposal (hereafter the "Proposal") of the Insurance Company Committee (hereafter the "Committee").[2] Further, the ministry has considered the European Union (EU) Reinsurance Directive[3] and Cross-border Merger Directive.[4]

[1] Ds 2009:55 En ny försäkringsrörelselag
[2] SOU 2006:55, Final report from the Swedish Insurance Company Committee (Sw: *Slutbetänkande av Försäkringsföretagsutredningen*).
[3] Directive 2005/68/EC on reinsurance
[4] Directive 2005/56/EC on cross-border mergers of limited liability companies

Controversial issues

The Proposal met with severe criticism from the insurance industry and important government bodies, such as the Swedish Financial Supervisory Authority (hereafter the "SFSA"). The objections focused almost entirely on two issues, of which the second proved to be the most controversial: (i) the proposed methods for strengthening policyholder influence in mutual insurance companies, such as Folksam Life; and (ii) the proposed procedures for "demutualization" of limited liability life insurance companies operated on a mutual basis (generally referred to as "hybrid companies"),[5] such as Skandia Life.

Two phases

The Ministry of Finance announced that the modernization of the outdated existing 1982 Insurance Business Act[6] (hereafter the "Old Act") would proceed in two phases: First, the ministry planned to launch a proposal relating to *uncontroversial* insurance business matters. Thereafter, the ministry intended to deal with the more controversial issues. Eventually, the ministry decided to postpone only the second of the two controversial issues outlined above, i.e. the demutualization issue.[7] As regards the issue of policyholder influence in mutual insurance companies, the ministry has now suggested the following compromise solution.

Compromise solution

Today, the voting power at general meetings of many of the major mutual insurance companies is held by organizations such as trade unions. The Committee proposed that only policyholders should be entitled to vote at general meetings of mutual insurance companies. This proposal attracted criticism from several of the parties concerned. Among other things it was feared that such *direct democracy* would be difficult to apply for practical reasons. The compromise solution now presented in the Memo means that at least half of the voting power should be held by the policyholders (or representatives elected by them) or organizations that could be considered to represent their interests[8]. It remains to be seen what kind of organizations that will qualify in this respect. It is clear from the Memo, however, that the Ministry of Finance has had no intention to *rock the boat*.

General principles

Not least due to the EU Insurance Directives[9] and the forthcoming EU Solvency II regulations, it is clear that a number of special regulations must continue to apply to insurance businesses in Sweden. The regulations must also continue to focus on policyholder and third-party protection issues.[10] Furthermore, the regulations must avoid creating any unjustified distortion of competition between Swedish and other European Economic Area (EEA) insurance companies.[11]

[5] Sw: *hybridbolag*, i. e. a life insurance company that, although limited by shares, does not have the right to distribute any profits to its shareholders
[6] Försäkringsrörelselag (1982:713)
[7] Ds 2009:55, page 130
[8] Ds 2009:55, page 235
[9] In particular Directive 1992/49/EC on non-life insurance, Directive 2002/83/EC on life assurance and Directive 2005/68/EC on reinsurance
[10] Ds 2009:55, page 147
[11] Ds 2009:55, page 143

General structure

Most major Swedish banks own life insurance companies, some banks have even entered the non-life market. As a consequence, most major Swedish life insurance companies have their own banks. Consistency between banking and insurance regulations is therefore a priority from a legislative and supervisory point of view.

As suggested in the Proposal, the New Act presented by the Ministry of Finance follows the structure of the well-received 1999 banking and finance reform. This reform made the general Companies Act[12] - by virtue of reference to the Companies Act in the Banking and Finance Act[13] - applicable to banks limited by shares.[14] Prior to 1999, Swedish banks were special purpose vehicles, established and regulated solely by the banking legislation. Further, the New Act has been based on a model whereby the Old Act (which regulates mutual and limited liability insurance companies) and the Friendly Societies Act[15] (which regulates friendly societies) will be repealed and replaced by a combined new Insurance Business Act.

Modernization

Although hypothetically less controversial, the first phase proposal now being put forward by the Ministry of Finance will still result in substantial changes and a significant modernization of the existing legislation. The content of the Memo is therefore of the utmost importance to the insurance industry. Further, the SFSA has pointed out to the ministry that there is also a need for significant modernization of the numerous instructions issued over the years by the SFSA in relation to insurance business. However, the SFSA has been unable to commence this task in the absence of new and modernized insurance business legislation.[16] Thus, the New Act will probably result in important subsequent regulatory changes.

Timing

The publication date of the Ministry of Finance's proposal was changed many times. Among other things, the delay was attributed to the implementation of the EU Cross-border Merger Directive, the financial crisis and, more recently, the preparations for the 2009 Swedish Chairmanship of the EU Committee of Ministers. According to the Memo, the New Act shall enter into force in January 2011. This will be in the *nick of time.* The complications would probably have been considerable for the industry if the New Act had been introduced in 2012, simultaneously with all regulatory amendments following from the forthcoming implementation of the EU Solvency II project.

[12] Aktiebolagslag (2005:551)
[13] Lag (2004:298) om bank- och finansieringsrörelse
[14] Sw: *bankaktiebolag*. There are other kinds of banks in Sweden regulated by other legislation (such as savings banks, Sw: *sparbanker*)
[15] Lag (1972:262) om understödsföreningar
[16] Letter from the SFSA to the Ministry of Finance dated December 19, 2008

Applicable general company law

As mentioned above, the New Act will follow the structure of the 1999 banking and finance reform, which made the general Companies Act - by virtue of reference to the Companies Act in the Banking and Finance Act - applicable to banks limited by shares.

Limited liability insurance companies

In the New Act, the general Companies Act will (by reference) be applicable to limited liability insurance companies (whether hybrid or profit distributing). Further, limited liability insurance companies will cease to be special purpose vehicles.

Friendly societies

In the new combined Act, which will include regulations for friendly societies, the general Co-operative Societies Act[17] will (by reference) be applicable to friendly societies. However, the friendly societies will remain special purpose vehicles.

Mutual insurance companies

Whether the general Companies Act or the general Co-operative Societies Act should be applicable to mutual insurance companies has been a controversial issue.

Technically, it appears that a mutual insurance company has a legal structure that in most respects is based on principles for cooperative associations (i.e. the customers are the owners). The Committee thus suggested making the general Cooperative Societies Act applicable to mutual insurance companies. However, few Swedish mutual insurance companies are managed in accordance with those principles. Many features of leading Swedish mutual insurance companies are instead borrowed from general company law. One reason for this is that voting power often lies in the hands of organizations such as trade unions (claiming to represent the interests of the policyholders), and not with individual policyholders.

Hence, the choice of applicable regulation for mutual insurance companies is closely connected to the controversial issue of policyholder influence referred to above. The position taken by the Swedish Federation of Insurance Companies (hereafter the "Insurance Federation") in response to the Proposal was, however, that the Cooperative Societies Act was outdated and otherwise unsuitable.

The Ministry of Finance has, in principle, based the proposed regulation of mutual insurance companies on what may appear logical from a technical perspective, i.e. by reference to the Cooperative Societies Act. Thus, the ministry did not entirely yield to demands from a number of politically influential organizations (i.e. by reference to the Companies Act). However, it seems that the ministry agrees with the Insurance Federation that the current Cooperative Societies Act is unsuitable for regulating many aspects of mutual insurance business.[18] The Cooperative Societies Act

[17] Lag (1987:667) om ekonomiska föreningar
[18] Ds 2009:55, page 208.

is subject to revision and the final result is expected to be presented at year end 2010.[19] It is possible that this may result in several modifications of the New Act.

Very little reference is actually made in the New Act to the Cooperative Societies Act. This means that most of the provisions necessary for regulating mutual insurance companies are provided within the context of the Act itself. As much as 91 paragraphs in the New Act contain regulations pertaining to general company matters for mutual insurance companies that deviate from what is generally applicable to ordinary cooperative societies. Thus, the ministry has in fact retained the existing, outdated regulation for mutual insurance companies. The outcome is that the New Act does not provide any modernization of the legal structure for mutual insurance companies. Further, mutual insurance companies will remain special purpose vehicles. However, the structure of the New Act is clearer and the wording is more modern than that of the Old Act.

Key issues

As mentioned above, a number of reform issues are uncontroversial by comparison with the two main points of contention; (i) and (ii) outlined above. Nevertheless, set forth below is a summary of some issues that might still have a significant impact for individual companies. Unless otherwise indicated below, the summary focuses only on issues of relevance to limited liability insurance companies.

Share capital

SFSA practice is that, when examining an application for incorporation of a new insurance company, the SFSA is entitled "for reasons of stability" to require that the insurance company has a certain share capital in excess of the minimum requirements.[20] However, there is no clear support in the existing Insurance Business Act for this regulatory practice. The Committee thus suggested that, in addition to the minimum requirements in general company law, the new Insurance Business Act should require insurance companies to have a share capital level "adapted to the extent and nature of the planned activities".

In the opinion of the Insurance Federation, the share capital provision proposed by the Committee and the SFSA's practice in this regard lacked legal merit. The only relevant capital requirement under the EU directives and forthcoming Solvency II regulations relates to the *capital base*. Whether the capital base consists of share capital or other tier-one capital should be of no concern to the Swedish regulator.

The Banking and Finance Act contains the same share capital requirement for banks as that proposed by the Committee for insurance companies.[21] For reasons of consistency, one would have expected the Ministry of Finance to follow the advice of the Committee. However, in the absence of any EU solvency regulations relating specifically to the extent of share capital in insurance companies, the

[19] Ds 2009:55, page 136.
[20] SOU 2006:55, page 252.
[21] The Banking and Finance Act, Chapter 10, section 2.

ministry has decided not to request insurance companies to have any share capital in excess of the minimum requirements.[22]

Authorization and the legal entity

An important consequence of the proposed future applicability of the Companies Act in relation to limited liability insurance companies is the fact that such companies will cease to be special (insurance) purpose vehicles. *Insurance companies limited by shares* will no longer be incorporated under a special incorporation authorization (referred to as a “concession”). They will become ordinary companies with a “permit” to conduct insurance business. This means that an existing ordinary company may become an insurance company.[23]

A company that has once been granted a permit to become an insurance company will also be able to change its line of business. However, to ensure consistency with the Banking and Finance Act, the Ministry of Finance has agreed with the Committee that an insurance company should be able to become another kind of regulated entity only (i.e. another kind of financial institution, such as a bank).[24] Today, for tax reasons (e.g. through the creation of untaxed reserves), a significant amount of capital is locked in as assets of insurance companies. The opportunity for diversification of a less successful insurance operation should therefore be of great interest to several insurance companies (as well as their consultants); even if this is limited to other regulated financial activities.

The insurance industry appears to have made no objections in relation to the above features of the Proposal. In light of the proposed consistency with the Banking and Finance Act, it is thus likely that this important feature of the proposed New Act will survive the legislative process.

According to the Memo, *mutual insurance companies* and *friendly societies* will remain special purpose vehicles. It will thus be possible to obtain a permit for conducting insurance activities in these forms only if the mutual insurance company or friendly society is incorporated following the receipt of the permit to conduct insurance business.[25] Arguably, the prevailing impression is that the Ministry of Finance agrees with the Swedish Insurance Federation’s opinion that the Cooperative Societies Act is either outdated or otherwise unsuitable for mutual insurance companies. Thus, the ministry has obviously drawn the conclusion that the simplest solution is to continue with the existing legislative structure, at least for the time being.

Portfolio Transfers

The existing Insurance Business Act states only that the SFSA should consider the rights of policyholders when examining whether a permit for a contemplated portfolio transfer should be granted.[26] However, the Committee indicated that the SFSA also considered the interests of insureds and beneficiaries in its decisions relating to proposed portfolio transfers.[27] The suggestion by the

[22] Ds 2009:55, pages 158-159
[23] Ds 2009:55, page 161
[24] Ds 2009:55, page 193
[25] Ds 2009:55, pages 212 and 274.
[26] The Old Act, Chapter 15, section 3.
[27] SOU 2006:55, page 551.

Committee to include such considerations in the wording of the new provisions[28] did not give rise to any objections from the insurance industry and has now been included in the New Act.[29]

As noted, both the Committee and the Ministry of Finance have proposed that it should be possible for an insurance company to revoke its insurance permit and apply for another kind of authorization (e.g. as a bank). However, only insurance companies may conduct insurance business. An insurance company must therefore transfer its portfolio of insurance policies to another insurance company prior to revoking its insurance permit. The New Act will not retain the existing stipulation that an insurance company must automatically enter into liquidation if it transfers its entire insurance portfolio.[30] The transfer of the portfolio will only result in forced liquidation when the SFSA, as a consequence of the transfer, decides to revoke the permit to conduct insurance business.[31] Hence, the insurance company may avoid liquidation if it has been granted another kind of authorization prior to the revocation, whether the revocation of the permit has been made voluntarily or on the initiative of the SFSA.[32]

Secrecy

According to the Old Act, insurance companies only have secrecy obligations in relation to genetic information and information that could reveal the identity of a beneficiary.[33] However, according to the Banking and Finance Act, a bank is not entitled to reveal any details of its business relations with a customer unless the information is required for a criminal investigation.[34] The Committee did not make similar proposals for insurance companies, on the understanding that another committee would consider the advantages and disadvantages thereof.[35] The Insurance Federation did not approve of such a delay and pointed out that there was an urgent need for a solution, as most insurance companies already undertook to apply a general secrecy obligation, although they were under no legal obligation to do so. The Insurance Federation feared that, in the absence of supporting legal provisions, contractually applied secrecy could conflict with a public duty to provide information. It will certainly be disappointing for many to read in the Memo that the possible introduction of a general secrecy obligation for insurance companies will, once again, be postponed awaiting further consideration.[36]

Contribution principle

Unless otherwise agreed between an insurance company and its policyholders, any profit to be distributed to policyholders shall be divided between them in relation to each policyholder's contribution to the profit (the contribution principle).[37] When the computation is made, each class of insurance shall be considered separately.

[28] SOU 2006:55, page 298.
[29] Ds 2009:55, page 206
[30] The Old Act, Chapter 14, section 3 compared to the New Act, Chapter 11, section 43.
[31] The New Act, Chapter 16, section 9.
[32] Ds 2009:55, page 193.
[33] The Old Act, Chapter 7, sections 20 and 20a.
[34] The Banking and Finance Act, Chapter 1, sections 10-12.
[35] SOU 2006:55, page 265.
[36] Ds 2009:55, page 167.
[37] The Old Act, Chapter 12, section 6.

The Committee had suggested that the contribution principle was unnecessary and should be abolished[38] as all insurance companies, according to SFSA instructions,[39] are liable to clearly disclose which profit distribution techniques that will be applied for each policy. The SFSA did not share this view and pointed out that profit distribution matters are not always clear and that the existence of a principle, although not mandatory, would provide a useful basis for handling unclear profit distribution issues both from a consumer and a supervisory point of view.[40] With a consumer protection objective in mind, the Ministry of Finance has decided to keep the contribution principle in the New Act as an optional instrument.[41]

Agreements with closely connected persons

To ensure consistency with the Banking and Finance Act, the Ministry of Finance agrees with the Committee that Swedish insurance companies should no longer be able to enter into agreements with any person or company closely connected to the insurance company (e.g. employees, directors, certain shareholders) or family members or companies closely connected to such persons or companies, unless any such agreement is approved by the board of directors, registered in a specific register and entered into on normal conditions or otherwise with a business purpose.[42]

Loan prohibition

Swedish limited liability companies are subject to a loan prohibition. This means that they cannot lend money to or grant security: (i) in favour of shareholders or directors of the board or the managing director or persons or companies closely related to such persons or companies; or (ii) with the intent that the borrower shall be able to acquire shares in the company or another company in the company group.[43] However, in light of the nature of its operations, banks are (with certain important modifications) exempt from the loan prohibition[44] and insurance companies are exempt from the first part of the loan prohibition as regards lending money to or granting security in favour of shareholders.[45]

Considering the proposed solution concerning agreements with closely connected persons or companies (see above), the Committee pondered over the delicate issue whether the exemptions from the loan prohibition in the Banking and Finance Act could be extended to insurance companies. It concluded that the existing exemption relating to prohibition against lending money to or granting security in favour of shareholders could be expanded to include directors of the board and the managing director (and closely related persons or companies). However, the Committee remained reluctant to allow insurance companies to be exempted from the second part of the provision

[38] SOU 2006:55, page 283.
[39] FFFS 2003:7 and 2006:2.
[40] Fi Dnr 06-6243-001, page 4.
[41] Ds 2009:55, pages 181-182
[42] Ds 2009:55, page 185.
[43] The Companies Act, Chapter 21, sections 1-6.
[44] The Banking and Finance Act, Chapter 10, section 17.
[45] The Old Act, Chapter 12, section 12. Please note, however, that life insurance companies that are providing occupational retirement provisions (i.e. companies that are providing services under the EU IORP Directive),are not entitled to mortgage any asset or otherwise give security in favour of a third party. This prohibition will be retained in the New Act (Chapter 4, section 6)

(hereafter referred to as the "Acquisition Loan Prohibition").[46] This is a view that has been shared by the Ministry of Finance.

The definition of a company group in the Old Act differs from the corresponding definition in the general Companies Act, which will be applicable by reference in the New Act. Neither the Committee nor the Ministry of Finance has chosen to consider that this may have implications for the extent of applicability of the Acquisition Loan Prohibition. A "company group" consists of a parent company and at least one subsidiary. Under the general Companies Act, any company limited by shares qualifies as a "parent company".[47] Under the Old Act, however, only an "insurance company" qualifies as a parent company to an insurance company.[48] Thus, if the shares of an insurance company are held by any other kind of entity, the insurance company and its shareholder do not form a company group. This means that if the intent of a loan is that the borrower shall be able to acquire shares in the legal entity that holds the shares in the lending insurance company, the loan prohibition in the Old Act is applicable only if the shareholder is an insurance company. By making the general Companies Act applicable to insurance companies limited by shares, the ministry will thus significantly increase the scope of applicability of the Acquisition Loan Prohibition.

Derivatives

In December 2008, the SFSA published a memo in which the authority declared its view on the interpretation of the existing Insurance Business Act in relation to the use of options, futures and other derivatives contracts.[49] The conclusion was that neither options, futures nor other derivatives contracts were permissible to enter into within a life insurance policy for which the policyholder (and not the insurance company) carried the investment risk. This view was somewhat surprising as it meant that the SFSA denied the policyholders a possibility to mitigate risks that the insurance company had been at liberty to use if the risks had been the insurance company's own risks. The Ministry of Finance has now clarified the issue in the New Act. Provided that certain other requirements are met, it may be permissible to enter into options, futures and other derivatives contracts even if the related risks are carried by the policyholders.[50]

Demergers

According to the Memo,[51] insurance companies should be able to enter into a public demerger procedure whereby a court of law – after examination by the SFSA – can grant the insurance company the right to either: (i) transfer all of its assets and liabilities to two or more other legal entities (whether existing or newly established), following which the insurance company would be automatically dissolved (without any liquidation procedure); or (ii) transfer a part of its assets and liabilities to one or more other legal entities (whether existing or newly established). The regulated part of an insurance company's activity must be transferred to another insurance company (or insurance companies).[52]

[46] SOU 2006:55, page 287.
[47] The Companies Act, Chapter 1, section 11.
[48] The Old Act, Chapter 1, section 9
[49] Promemoria 2008-12-17
[50] Ds 2009:55, page 379.
[51] Ds 2009:55, page 190.
[52] SOU 2006:55, page 292.

As indicated above, Swedish insurance companies are able to transfer their portfolios of insurance policies to other insurance companies. However, a portfolio transfer procedure relates only to the insurance company's insurance undertakings. Transfer of other debts and liabilities of the transferee has been achievable only through a merger (see below) or subject to the individual consent of each relevant creditor. Demergers will thus simplify the transfer of complex businesses in cases where a merger or a complicated renegotiation of outstanding liabilities is not desirable. The fact that insurance companies will be able to make use of the proposed demerger procedure for transfer of non-regulated parts of their activities to companies that are not insurance companies is another innovation. Further, compared to a 100% portfolio transfer, a demerger where all assets and liabilities are transferred will result in the immediate dissolution of the insurance company instead of the sometimes rather complicated liquidation procedure that now follows from a total portfolio transfer.

Mergers

According to the existing Insurance Business Act,[53] a merger is a procedure whereby either: (i) one insurance company acquires all of the assets and liabilities in one or more other companies (whether insurance companies or not); or (ii) one company, together with one or more other companies (whether insurance companies or not), transfers all of its assets and liabilities to a newly established insurance company. The merger provisions of the general Companies Act relate to any company limited by shares. However, only insurance companies may conduct insurance business. Accordingly, an insurance company may not transfer all of its assets and liabilities to an ordinary company. Thus, although the general Companies Act will become applicable to insurance companies limited by shares, specific merger provisions in the New Act shall be applied if any of the parties to a merger is an insurance company.[54]

Previously, only a Swedish company limited by shares qualified as a "company" and only a Swedish insurance company limited by shares qualified as an "insurance company". However, Sweden has recently implemented the EU Cross-border Merger Directive.[55] As of July 15, 2009, the definitions of a "company" and an "insurance company" have been extended to include EEA domiciled legal entities that are equivalent to Swedish companies limited by shares and insurance companies limited by shares.[56] One can only speculate on how this liberalization of Swedish law will change the structure of established and future cross-border insurance company acquisitions, such as the old Mutual/Skandia transaction and the more recent Storebrand/SPP transaction.

The SFSA's position has previously been that a merger, which includes the transfer of insurance policies, can be achieved only through a combination of a portfolio transfer procedure (relating to the rights of the policyholders) and a merger procedure (relating to the rights of all other creditors). According to the Committee, however, this has been a misunderstanding of the legislative intent.[57] During the preparations for the implementation of the EU Cross-border Merger Directive, the SFSA suggested that notification procedures in favour of policyholders (similar to the notification procedures that are applicable in relation to portfolio transfers) should be added to the merger

[53] The Old Act, Chapter 15 a, section 1.
[54] The New Act, Chapter 11, section 30
[55] Prop. 2008/09:180.
[56] Prop. 2008/09:180, page 15.
[57] SOU 2006:55, page 292.

provisions.[58] According to the Government, however, the introduction of notification procedures, whether in relation to internal Swedish or cross-border mergers, would represent a severe interference with the current merger regulations.[59] Further, the Ministry of Finance now clarifies in the Memo that a merger - like a demerger (see above) - is an *alternative* to a portfolio transfer.[60] This means that a merger procedure will include *all* liabilities of the insurance company (whether to policyholders or others). This clarification will simplify any future mergers.

Directors' and Officers' liability issues

Many of the insurance law reforms in recent years have emanated from various scandals and expressions of mistrust among policyholders against the management of certain life insurance companies. It was thus somewhat surprising that the Committee proposed limitations of the liability of the managing director and the board of directors for damages caused to shareholders and other third parties, by abolishing those persons' special liability for breaches of technical guidelines and investment guidelines.[61] This view of the Committee is, however, shared by the Ministry of Finance. No specific liability for breaches of any internal guidelines is thus incorporated in the New Act.[62] From a consumer protection point of view, this might be an initiative that will prove difficult to explain.

Liability issues for Actuaries

The Committee also proposed the abolishment of the specific liability of the actuary for damages caused to the company or its shareholders and other third parties.[63] According to the Committee, the actuary should only be liable for damages to the same extent as any other employee. The reason for this proposal was that the responsibility of the board of directors and the managing director would become clearer as a result.[64] However, the commentary to the existing Insurance Business Act states that the assessments made by an actuary call for "specialist competence" and further notes that "important decisions of the board of directors and the managing director" are based on this. Even the insurance company's auditors are "completely dependent on the actuary".[65] Given that any liability of the board of directors and the managing director is negligence based, it is thus unlikely that a court of law would find a director of the board or a managing director liable for damages due to actuarial mistakes.

The Ministry of Finance has recognized that the board of directors and auditors are often completely dependent on the actuary's mathematical and statistical skills. However, the ministry is of the opinion that the same could be said for a number of other experts and key employees. The ministry has thus decided not to incorporate any specific liability for the actuary in the New Act.[66] It is difficult to see how this proposal, partly based on considerations made by a previous committee some 14

[58] Remissvar 2009-03-09, FI Dnr 09-1535.
[59] Prop. 2008/09:180, page 66.
[60] Ds 2009:55, page 188-189
[61] The Old Act, Chapter 16, section 1 and SOU 2006:55, page 306.
[62] Ds 2009:55, page 198.
[63] The Old Act, Chapter 16, section 1.
[64] SOU 2006:55, page 306.
[65] Kommentar till försäkringsrörelselagen, tredje upplagan, page 230.
[66] Ds 2009:55, pages 186 and 198.

years ago,[67] would enhance customer protection. Further, there is also a risk that the status and position of the actuary in the company will be devalued, to the detriment of policyholders.

Outlook

The Ministry of Finance has declared that the New Act should enter into force as early as January 1, 2011. Any comments on the Memo must therefore be sent to the Ministry of Finance at the latest on February 5, 2010. Considering that a general election will be held in September 2010, it is probable that the intention is to present the proposed New Act to the Swedish Parliament as early as during spring 2010.

Notwithstanding some critical remarks made above, the proposed New Act is in all a major step towards a modernization of Swedish insurance business regulations. However, even if the New Act does enter into force as planned, many amendments will soon become necessary. As noted above, a number of provisions relating to mutual insurance companies might be subject to revision once the Cooperative Societies Act has been modernized. Further, already in 2012, major amendments may prove necessary in order to implement the EU Solvency II project.

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[67] Försäkringsutredningen, SOU 1995:87